



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,517	07/02/2003	Marsella Jefferson	1111	3540
23545	7590	09/12/2006	EXAMINER	
KATHLEEN M HARLESTON THE HARLESTON LAW FIRM 909 TALL PINE ROAD MT PLEASANT, SC 29464			GOLLAMUDI, SHARMILA S	
			ART UNIT	PAPER NUMBER
			1616	

DATE MAILED: 09/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

47

Office Action Summary	Application No. 10/612,517	Applicant(s) JEFFERSON, MARSELLA	
	Examiner Sharmila S. Gollamudi	Art Unit 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 16-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 1616

DETAILED ACTION

Claims 1-20 are pending in this application. Receipt of Response to the Restriction/Species Requirement of 2/9/06 and 7/19/06, respectively, is acknowledged.

Election/Restrictions

Applicant's election with traverse of Invention I, claims **1-15** in the reply filed on 2/9/06 is acknowledged. The traversal is on the ground(s) that the search would not be an undue burden to the examiner. This is not found persuasive because as set forth in the Office Action of 1/10/06, the product may be made by a materially different process. Claims 16-20 are withdrawn as being directed to a non-elected invention.

The requirement is still deemed proper and is therefore made FINAL.

Applicant's election with traverse of the species grape seed oil in the reply filed on 7/19/06 is acknowledged. Upon further consideration, the examiner agrees that the claimed essential oils are obvious variants; thus the examiner withdraws the species requirement.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

Claims 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Independent claim 1 is directed to a composition comprising: a) about 5 to 30% of at least one aromatic essential oil; b) about 20 to 80% petroleum jelly; c) about 5 to 40% water; wherein the ration of the essential oil and water to petroleum jelly is between about 1:10 and about 1:1.

Art Unit: 1616

Dependent claim 3 is directed to a ratio of petroleum jelly to essential oil of 1:2 to about 1:4. The claimed ratio in dependent claim 3 is inconsistent with the claimed proportions of claim 1.

Claim 3 recites the limitation "the essential oil mixture" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Lachampt et al (3,846,546).

Lachampt et al discloses cosmetic emulsions. See abstract. Example 4 comprises 4% almond oil, 20% petroleum jelly, 2% lecithin, and 40% water among other components. Note 4% almond oil reads on instantly claimed "about 5%". With regard to claim 3, note the 112, second rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 1616

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-3, 5, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 019800982 in view of Muller et al (4,954,345).

DE '982 teaches a medicinal ointment comprises an ointment base selected from at least one of lanolin, Vaseline, beeswax, or paraffin and water. The ointment further contains an active ingredient of (i) a liposome component; (ii) an ethereal oil of at least one of nutmeg oil, borage oil, jojoba oil, evening primrose oil, tea tree oil, or lavender oil. Examples 1 teaches a composition comprising 30-60% beeswax/lanolin; 1-10% of a liposome component; 1-10% tea tree oil; 1-10% jojoba oil; 0.5-10% lavender oil; and 2-20% water, among other components.

DE '982 does specify the liposome component.

Muller teaches a pharmaceutical preparation for external or transdermal application, which comprises a dispersion of liposomes, wherein said liposomes incorporate or enclose an active ingredient. Muller teaches liposomes are medicinal vehicles and are prepared from phospholipids, for example, lecithin. Muller teaches various methods may be employed to prepare the liposome preparations from the components of the liposomes, which are phospholipids. Particularly suitable phospholipids are phosphatidylcholines, such as lecithins (a

Art Unit: 1616

naturally occurring group of phospholipids). See column 1, lines 20-35 and column 2, lines 55-65.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teaching of DE '982 and Muller and utilize lecithin as the liposome component taught in DE '982. One would have been motivated to do so since Muller teaches phospholipids, such as lecithin, are conventional components used to make a liposomes. Therefore, although DE does not specify the liposome component, it would have been obvious to utilize a conventional and routinely used liposome component such as lecithin, to make the liposome. Note that with regard to DE '982 although the example utilizes lanolin or beeswax, it would have been obvious for a skilled artisan to substitute the exemplified ointment base (beeswax/lanolin? with Vaseline as suggested by DE '982 since DE teaches the use of beeswax, lanolin, *or* Vaseline as the base for the ointment.

Claims 7-8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 019800982 in view of Muller et al (4,954,345) in further view of Schultz (20020082279).

The teachings of DE '982 and Muller have been delineated above. DE '982 teaches a composition for the treatment of psoriasis, eczema, and dermatitis comprising at least one ethereal oil of at least one of nutmeg oil, borage oil, jojoba oil, evening primrose oil, tea tree oil, or lavender oil. Examples 1 teaches a composition comprising 30-60% beeswax/lanolin; 1-10% of a liposome component; 1-10% tea tree oil; 1-10% jojoba oil; 1-10% borage oil, 0.5-10% lavender oil; and 2-20% water, among other components.

DE '982 does not teach the use of basil, peppermint, or sage oil respectively.

Art Unit: 1616

Schultz teaches a topical composition for the treatment of a dermatologic diseases including psoriasis, dermatitis, and eczema, wherein the composition comprises at least one essential oil. see abstract and [0018]. Essential oils which have a direct skin effect include Peppermint, Chamomile, Cypress, Cajeput, Thyme, Clove Bud, Lavender, Clary Sage, Rosemary, and Basil, among others. See [011].

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of the above references and substitute the prior art's lavender oil with the instantly claimed oil (basil, peppermint, or sage respectively). One would have been motivated to do so with a reasonable expectation of success and similar results since Schultz teaches lavender oil, basil oil, peppermint, and sage oil are all essentials oils that treat skin disorders such as psoriasis, dermatitis, and eczema. Therefore, it would have been prima facie obvious for a skilled artisan to substitute one functionally equivalent essential oil with another functionally equivalent essential oil since the prior art establishes the functional equivalency of the instantly claimed essential oil(s) and the prior art's essential oil, in treating skin disorders.

Claims 4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 019800982 in view of Muller et al (4,954,345) in further view of Grollier (4626529).

The teachings of DE '982 and Muller have been delineated above. DE '982 teaches a composition for the treatment of psoriasis, eczema, and dermatitis. Examples 1 teaches a composition comprising 30-60% beeswax/lanolin; 1-10% of a liposome component; 1-10% tea tree oil; 1-10% jojoba oil; 1-10% borage oil, 0.5-10% lavender oil; and 2-20% water, among other components.

DE '982 does not teach the instantly claimed grape seed oil or almond oil, respectively.

Art Unit: 1616

Grollier teaches an oily composition for the treatment of the skin and scalp. Grollier teaches vegetable oils that are suitable include almond oil, wheat germ oil, apricot-kernel oil, walnut oil, palm oil, pistachio oil, sesame oil, castor oil, soya oil, avocado oil, safflower oil, copra oil, hazelnut oil, olive oil, grape-seed oil, sunflower oil, colza oil, cade oil, maize germ oil, peach-kernel oil, and jojoba oil. see column 4, lines 14-20.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of the above references and substitute the prior art's jojoba oil with the instantly claimed grape seed oil or almond oil, respectively. One would have been motivated to do so with a reasonable expectation of success and similar results since Grollier teaches jojoba oil, almond oil, and grape seed oil are all vegetable oils that are conventionally used in compositions for the treatment of the skin and scalp. Therefore, it would have been prima facie obvious for a skilled artisan to substitute one functionally equivalent vegetable oil with another functionally equivalent vegetable oil since the prior art establishes the functional equivalency of the instantly claimed oil(s) and the prior art's oil, in treating the skin.

Claims 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 019800982 in view of Muller et al (4,954,345) in view of Grollier (4626529) in further view of Schultz (20020082279).

The teachings of DE, Muller, and Grollier have been set forth above.

DE '982 does not teach the use of rosemary or thyme oil respectively.

Schultz teaches a topical composition for the treatment of a dermatologic diseases including psoriasis, dermatitis, and eczema, wherein the composition comprises at least one essential oil. see abstract and [0018]. Essential oils which have a direct skin effect include

Art Unit: 1616

Peppermint, Chamomile, Cypress, Cajeput, Thyme, Clove Bud, Lavender, Clary Sage, Rosemary, and Basil, among others. See [011].

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of the above references and substitute the prior art's lavender oil with the instantly claimed oil, rosemary or thyme respectively. One would have been motivated to do so with a reasonable expectation of success and similar results since Schultz teaches lavender oil, rosemary oil, and thyme oil are essential oils that treat skin disorders such as psoriasis, dermatitis, and eczema. Therefore, it would have been prima facie obvious for a skilled artisan to substitute one functionally equivalent essential oil with another functionally equivalent essential oil since the prior art establishes the functional equivalency of the instantly claimed essential oil(s) and the prior art's essential oil, in treating skin disorders.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over DE 019800982 in view of Muller et al (4,954,345) in view of Chang et al (5,942,233) in further view of Koulbanis et al (5,560,916).

The teachings of DE and Muller have been delineated above. DE teaches a medicinal ointment for the treatment of psoriasis, dermatitis, and eczema.

The references do not teach the use of apple cider in the composition.

Chang teaches a herbal composition to promote blood circulation. Chang teaches the incorporation keratin softening substance such as vinegar to soften the keratin layers and allow the drug to penetrate the skin easily. See column 5, lines 55-60 and column 6, lines 8-17. The keratin softening material is taught in an amount of 0.5-4%. See claim 2 and 3.

Art Unit: 1616

Koulbanis teaches a cosmetic composition comprising vinegar. See abstract. Koulbanis discloses the prior art utilized vinegar as an antiseptic, for the treatment of psoriasis and eczema. See column 1, lines 35-50. Koulbanis teaches the properties of vinegar are due to the acetic acid. Koulbanis teaches several types of vinegar such as cider vinegar, lemon vinegar, blackberry vinegar and raspberry vinegar are suitable and regardless of its origin, vinegar has a natural acidity which is due principally to acetic acid, which makes up from 4 to 18% of its composition. Vinegar additionally comprises 10 inorganic salts, in particular those of zinc, potassium, lithium and sodium; sugars, in particular glucose, fructose and xylitol; ethanol, and vitamins (vitamins B and D in particular). See column 2, lines 25-44.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the above references and further utilize vinegar in DE's composition. One would have been motivated to do so since Chang teaches the use of vinegar to soften keratin layers, allowing better penetration of active agents. Therefore, a skilled artisan would have been motivated to use vinegar for its penetration enhancing properties. Further, a skilled artisan would have expected success using vinegar from any source since Koulbanis teaches the effectiveness of vinegar is due to the acetic acid and the source of the vinegar is not critical since all vinegars have acetic acid and other essential components. Moreover, a skilled artisan would have reasonably expected success by the addition of vinegar to DE's composition since Koulbanis teaches the state of the art wherein it is known to utilize vinegar to treat skin disorders such as psoriasis and eczema for its antiseptic properties. Thus, a skilled artisan would have been further motivated to use vinegar for its antiseptic properties.

Art Unit: 1616

Claims 1-3 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones (5,116,607) in view of Flender (5,179,086) or Peffly (6,093,410).

Jones teaches hair dressing cream comprising 46% petrolatum (also known as petroleum jelly), 2.32% lecithin, 1.16% olive oil, 5.49% essential oil mixture (jojoba oil, coconut oil, sesame oil, wheat germ oil, castor oil, almond oil, and mink oil combined), PEG-75 lanolin that is 50% aqueous, 2.32% lecithin, 1% of a fragrance, among other components.

Jones does not teach the water in the composition.

Flender teaches a topical ointment to treat psoriasis comprising 20-40% Vaseline, 25-45% jojoba oil, 2-6% cholesterol, 2-8% beeswax, and 15-30% water. See column 3, lines 15-25. Flender teaches the use of Vaseline and jojoba oil as vehicles and the use of beeswax to influence the spreadability of the ointment. See column 2, lines 35-66. Flender teaches water is added to the composition to provide a low-viscosity. The amount of water utilized depends on the consistency desired. See column 3, lines 25-36.

Peffly teaches a personal care composition. Peffly teaches adding water to the composition when the viscosity of the system becomes very thick a portion of the water can be added to the system. The water is used in an amount sufficient to lower the viscosity enough in order to achieve good mixing.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teaching of Jones and Flender and further utilize water in Jones' cream composition. One would have been motivated to do so to decrease the viscosity of the composition and obtain the desired consistency of the composition as taught by Flender who demonstrates the state of art wherein it is known to add water to compositions to reduce viscosity

Art Unit: 1616

of the composition. Further, Peffly is also cited since Peffly also demonstrates that is known in the art to add water to a composition to reduce its viscosity. The addition of water to Jones' composition and would not have a deleterious effect since Jones teaches the composition is in a cream form, which is an emulsified emulsion that comprises both oily components and aqueous components. Jones teaches the use of various water-soluble substances and water containing agents such as PEG-75 lanolin that is 50% aqueous. Therefore, a skilled artisan would have reasonably expected success with the modification.

Claims 4, 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones (5,116,607) in view of Flender (5,179,086) or Peffly (6,093,410) in further view of Hyldgaard (6342208).

The teachings of Jones, Flender, and Peffly have been delineated above. Jones teaches the use of vitamin E.

The references do not teach the use of citric acid or grape seed oil.

Hyldgaard teaches an oil-in-water emulsion for the treatment of skin and hair. Hyldgaard teaches the use of stabilizing agents for emulsions, such as antioxidants like citric acid, sorbic acid, benzoic acid, ascorbic acid, tartaric acid, and tocopherols (vitamin E). The examples utilize 0.5%. Further, Hyldgaard teaches suitable vegetable fats are avocado oil, coconut fat, cocoa butter, rapeseed oil, maize oil, sesame oil, olive oil, soybean oil, palm oil, grape seed oil, almond oil, linseed oil, peanut oil, walnut oil, tall oil, thistle seed oil, wheat germ oil, jojoba oil, castor oil, hydrogenated vegetable oils, and mixtures thereof.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the above references and substitute vitamin E with the instantly claimed

Art Unit: 1616

citric acid. One would have been motivated to do so since Hyldgaard teaches emulsions require stabilizers such antioxidants including citric acid and tocopherol. Therefore, it would have been prima facie obvious for a skilled artisan to substitute one functionally equivalent emulsion stabilizer with another functionally equivalent emulsion stabilizer since the prior art establishes the functional equivalency of the instant stabilizer and the prior art's stabilizer. Additionally, it would have been obvious for a skilled artisan to substitute the prior art's oils (jojoba, sesame, wheat germ, almond or coconut oil) with the instantly claimed grape seed oil. One would have been motivated to do so with a reasonable expectation of success and similar results since Hyldgaard teaches grape seed, jojoba, sesame, wheat germ, almond, and coconut oil all are vegetable oils that may be used in compositions for the treatment of the skin and hair. Therefore, it would have been prima facie obvious for a skilled artisan to substitute one functionally equivalent vegetable oil with another functionally equivalent vegetable oil since the prior art establishes the functional equivalency of the instantly claimed oils and the prior art's oil, in treating hair.

Conclusion

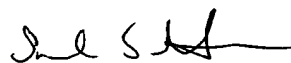
All the claims are rejected.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharmila S. Gollamudi whose telephone number is 571-272-0614. The examiner can normally be reached on M-F (8:00-5:30), alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1616

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Sharmila S. Gollamudi
Examiner
Art Unit 1616